

IN THE IOWA DISTRICT COURT IN AND FOR POWESHIEK COUNTY

STATE OF IOWA, ex rel., THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
(99AG23112),

Plaintiff,

VS.

JIM HEISHMAN,

Defendant.

LAW NO. \_\_\_\_\_

**PETITION AT LAW**

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant Jim Heishman, states as follows:

## Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Jim Heishman (hereafter "Heishman"), for violations of the "Iowa One Call" statute, Iowa Code chapter 480. Heishman failed to provide prior notice of an excavation to the One Call Notification Center, proceeded with the excavation without any underground facilities having been located and marked, and hit and damaged a hazardous liquids pipeline. Gasoline was released from the damaged pipeline which entered tile lines and a stream, resulting in a fish kill, and substantial property damage and clean-up costs.

## Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.
4. Defendant Jim Heishman resides at 705 - 320<sup>th</sup> Avenue, Grinnell, Iowa 50112.

## Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties." Iowa Code § 480.1(10).

## **Jurisdiction**

10. Iowa Code chapter 480, commonly referred to as the “Iowa One Call” statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least forty-eight hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989). The notice for a location outside of a city shall include:

1. the name of the county, township, range and section;
2. the name and address of the excavator;
3. the excavator’s telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and
8. if known, the quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

Iowa Code §§ 480.4(1)(c)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to

each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within forty-eight hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. For purposes of Iowa Code section 480.4, “an excavation commences the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.” Iowa Code § 480.4(1)(d).

15. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

16. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed ten thousand dollars for each violation for each day the violation continues, up to a maximum of five hundred thousand dollars.

17. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

18. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

### **Facts**

19. On or about March 17, 2005, Heishman conducted an excavation to install drainage tiles on property located at 705 - 320<sup>th</sup> Avenue in rural Poweshiek County, Iowa.

20. Heishman did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose

facilities may be affected by the excavation. Heishman proceeded with the excavation without any underground facilities having been located and marked on the property.

21. Magellan Midstream Partners, Inc. is the owner and operator of an underground hazardous liquids pipeline, 8-inch diameter, which transports hazardous liquids, such as gasoline, from a terminal at Grinnell, Iowa, to another terminal at Waterloo, Iowa.

22. During the excavation, Heishman's tiling equipment hit and damaged the Magellan hazardous liquids pipeline which was carrying gasoline under 819 pounds per square inch (psig) of pressure. The damage caused the release of approximately 81 barrels of gasoline which entered two tile drains and then discharged into a nearby stream. The gasoline discharge resulted in a fish kill. Property damage and clean-up costs exceeded \$200,000.00.

23. Digging to install drain tiles constitutes "excavation" as defined in Iowa Code section 480.1(4).

24. At all material times hereto, Heishman was an "excavator" as defined in Iowa Code section 480.1(5).

25. A buried hazardous liquids pipeline is an "underground facility" as defined in Iowa Code section 480.1(10).

26. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt Heishman from the requirement that he contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

### **Violations**

27. On or about March 17, 2005, Jim Heishman engaged in an excavation at 705 - 320<sup>th</sup> Avenue, in rural Poweshiek County, Iowa, without first contacting the statewide notification

center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8).

**Prayer for Relief**

WHEREFORE, Plaintiff State of Iowa, ex rel, Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant Jim Heishman pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. issue a permanent injunction enjoining Defendant Jim Heishman from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
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